



Attorney's Docket No. 028870-204

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Patent
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In re Patent Application of)
David C. Greenspan, et al.) Group Art Unit: 1614
Application No.: 09/560,046) Examiner: John Pak
Filed: April 27, 2000)
For: Anti-Inflammatory and Antimicrobial Uses)
for Bioactive Glass Compositions)

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Assistant Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

Applicants respectfully traverse the restriction requirement set forth in the Office Action dated August 1, 2001.

In the Office Action, the Examiner contends that Claims 1 - 49 are generic to a plurality of disclosed patentably distinct species comprising various bioactive glass with different possible components. The Examiner further contends that Applicants are required to elect a single disclosed bioactive glass wherein all of its components are specified.

In response, Applicants respectfully assert that all embodiments of claims 1 - 49 should properly be examined together. Applicants note that the various embodiments of the invention are so closely related that a proper search of any would, by necessity, require a proper search of the others. Thus, Applicants submit that all of the embodiments can be searched simultaneously, and that a duplicative search, with possibly inconsistent results, may occur if the election of species requirement is maintained.

Applicants submit that any nominal burden placed upon the Examiner to search accordingly to determine the art relevant to Applicants' overall invention is significantly outweighed by the public's interest in not having to obtain and study many separate patents in order to have available all of the issued patent claims covering Applicants' invention. The alternative is to proceed with the filing of multiple applications, each consisting of generally the same disclosure, and each being subjected to essentially the same search, perhaps by different Examiners on different occasions. This process would place an unnecessary burden on both the Patent and Trademark Office and on the Applicants.

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Regardless of whether the embodiments are independent or distinct, Applicants respectfully assert that the making of an election of species is not mandatory in all instances where it is possible to do so. Rather, the Examiner may use discretion and choose not to make an election of species where circumstances warrant. It is believed that such is the case in the present application.

Accordingly, in the interest of economy, for the Office, for the public-at-large, and for Applicants, reconsideration and withdrawal of the election requirement are requested.

Nevertheless, in order to comply with the requirements of 37 C.F.R. § 1.143 and MPEP § 809.02(a), Applicants provisionally elect, with traverse, to prosecute the invention in which the bioactive glass has a composition by weight percentage as follows:

<u>Component</u>	<u>Percent</u>
SiO ₂	40-86
CaO	10-46
Na ₂ O	0-35
P ₂ O ₅	2-8
CaF ₂	0-25
B ₂ O ₃	0-10
K ₂ O	0-8
MgO	0-5

Applicants submit that claims 7, 27, 33, 39, and 43 read on the elected species, and that claims 1-6, 9-26, 29-32, 35-38, 41-42, and 45-49 are generic claims.

Applicants earnestly solicit favorable consideration of the above response and early passage to issue the present application. The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Applicants reserve the right to file a divisional application covering the non-elected subject matter.

Respectfully submitted,

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Dated: Sept. 18, 2001